

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR TRANSFER NOS. 5522 & 5523)
IN THE NAME OF SOUTHFIELD)
DAIRY)
_____)

PRELIMINARY ORDER

(Note: This order has now become final because
exceptions were not filed)

This matter having come before the Idaho Department of Water Resources (the "Department") in the form of a protested application for transfer and the Department having held a conference and a hearing in the matter, the hearing officer enters the following Findings of Fact, Conclusions of Law and Preliminary Order:

FINDINGS OF FACT

1. On December 16, 1997, the Snake River Basin Adjudication (SRBA") court issued a partial decree for water right no. **36-02297** as follows:

| | |
|---------------------|---|
| Source: | Groundwater |
| Priority: | March 23, 1956 |
| Rate of diversion: | 1.82 cubic feet per second ("cfs") |
| Point of diversion: | SE1/4NW1/4 Section 10, T8S, R14E, B.M., Gooding County |
| Use: | Irrigation |
| Season of use: | Irrigation season* |
| Place of use: | 91 acres in NW1/4 Section 10, T8S, R14E, B.M., Gooding County |

* The season of use will be redecreed as April 1 to October 31

(Note: The "1/4" designations will be omitted from subsequent legal descriptions in this order).

2. On January 2, 1998, the SRBA court issued a partial decree for water right no. **36-07377** as follows:

| | |
|-------------------------|---|
| Source: | Groundwater |
| Priority: | September 7, 1973 |
| Rate of diversion: | 2.23 cfs |
| Point of diversion: | NENE Section 9, T8S, R14E, B.M. (2 points), Gooding County |
| Use: | Irrigation |
| Season of use: | Irrigation season* |
| Place of use: | 298 acres in parts of sections 3, 4 and 9, T8S, R14E, B.M., Gooding County |
| Conditions of Approval: | - Use of this right with rights 36-04021, 36-10916 and 36-07547 is limited to a combined total of 298 acres in a single irrigation season. - This right is limited to the irrigation of 144 acres in a single irrigation season. |

* The season of use will be redecreed as April 1 to October 31

3. On January 2, 1998, the SRBA court issued a partial decree for water right no. **36-07547** as follows:

Source: Groundwater
Priority: May 13, 1975
Rate of diversion: 3.2 cfs
Point of diversion: NENE Section 09, T8S, R14E, B.M. (2 points), Gooding County
Use: Irrigation
Season of use: Irrigation season*
Place of use: 298 acres in parts of sections 3, 4 and 9, T8S, R14E, B.M., Gooding County
Conditions of Approval: - Use of this right with rights 36-04021, 36-10916 and 36-07377 is limited to a combined total of 298 acres in a single irrigation season.

* The season of use will be decreed as April 1 to October 31

4. On June 3, 1999, Southfield Dairy ("applicant") filed Application for Transfer No. 5522 ("application") with the Department. The applicant proposes to change the nature of use of 1.62 cfs and 315 AFA of parts of water right nos. 36-07377 and 36-07547 from irrigation to stockwater and commercial uses in connection with a proposed dairy with 5,200 milking cows and 700 dry cows. The applicant proposes to divert water year-round from two new wells to be drilled in the SENW Section 10, T8S, R14E, B.M. The proposed dairy site is located within the NENW and S1/2NW Section 10, all in T8S, R14E, B.M. which was formerly irrigated by water right no. 36-02297. Liquid waste from the dairy will be applied to land within the NE Section 9, T8S, R14E, B.M. together with parts of other water rights under companion Transfer No. 5523.

5. On June 3, 1999, the applicant also filed Application for Transfer No. 5523 ("application") with the Department proposing to change the place of use of 1.82 cfs of water right no. 36-02297, 0.24 cfs of water right no. 36-07377 and 0.35 cfs of water right no. 36-07547 and create a permissible place of use for irrigation purposes. The proposed place of use is 141 acres within the NE Section 9, T8S, R14E, B.M.

6. The remaining portions of rights 36-07377 and 36-07547 not involved in the transfers are generally described as follows:

36-07377C - 1.33 cfs in the name of Michael L. and Katherine G. Branchflower
36-07377E - 1.09 cfs in the name of Michael L. and Katherine G. Branchflower
36-07547C - 1.94 cfs in the name of Michael L. and Katherine G. Branchflower
36-07547E - 1.59 cfs in the name of Michael L. and Katherine G. Branchflower

7. The Department published notice of the application which was subsequently protested by Bill Chisholm and Larry Bay. Larry Bay subsequently withdrew his protest.

8. On December 7, 1999, the Department conducted a hearing in the matter. The applicant was present and was represented by Robert E. Williams. The protestant was present and represented himself.

9. Issues identified by the protestant are as follows:

- a. The proposed changes will injure other water rights.
- b. The proposed changes will constitute an enlargement in use of the original right.
- c. The proposed changes are not in the local public interest.
- d. The proposed changes are not consistent with the conservation of water resources within the state of Idaho.

10. Exhibits premarked, offered or accepted as a part of the record are as follows:

- a. Applicant's Exhibit 1 - Southfield West Dairy Site Vicinity Plan
- b. Applicant's Exhibit 2 - Dairy Site Map
- c. Applicant's Exhibit 3 - Letter dated November 12, 1999 to Edwin Southfield from Marsha Neibling
- d. Applicant's Exhibit 4 - Letter dated November 15, 1999 to Edwin Southfield from Jenifer Beddoes together with Animal Waste Management Planning Worksheet
- e. Applicant's Exhibit 5 - Letter dated June 3, 1999 to Ed Southfield from Stephen N. Thompson
- f. Applicant's Exhibit 6 - Well Driller Reports
- g. Applicant's Exhibit 7 - Analysis of Water Right Transfer to Dairy - dated November 11, 1999
- h. Applicant's Exhibit 8 - Well Interference Analysis Southfield West Dairy
- i. Applicant's Exhibit 9 - USGS Observation Well Data
- j. Applicant's Exhibit 10 - Livestock Confinement Operations - Water Requirements and Consumptive Use Worksheet
- k. Applicant's Exhibit 11 - Gooding County New CAFO Siting Permit
- l. Applicant's Exhibit 12 - An Evaluation of the Idaho Dairy pollution Prevention Initiative 1996-1998 dated February 18, 1999
- m. Applicant's Exhibit 13 - Letter dated November 12, 1999 to Arie Roeloffs from Phillip J. DeRenzis
- n. Applicant's Exhibit 14 - Letter dated November 15, 1999 from Greg Hirai
- o. Applicant's Exhibit 15 - Letter dated June 4, 1999 to Judy Daubner from Marv Patten
- p. Applicant's Exhibit 16 - Letter dated November 15, 1999 from Glenn Vandergiessen
- q. Applicant's Exhibit 17 - Letter dated November 15, 1999 from Paul Borchard

11. Gooding County has issued a New CAFO Siting Permit to the applicant for 7,885 animal units. (See Applicant's Exhibit 11).

12. The applicant operates an existing dairy located about 1 mile south and 4.5 miles west of Wendell, Idaho which presently milks from 5,000 to 5,200 cows.

13. The proposed new dairy is located about 3 to 4 miles from the existing dairy and will dry up about 100 to 105 acres of irrigated land. The cost of feed which will be purchased locally for the new dairy is estimated to be in excess of 6 million dollars. Neighbors have agreed to take solid waste generated by the dairy.

14. Corrals are maintained by scraping rather than by flushing. Water is used about 3 times before it is discharged to the liquid waste facility.

15. The rate of diversion, consumptive use and total volume of water diverted will not be larger after the transfers than before the transfers. (See Applicant's Exhibit 7).

16. Using an average annual pumping rate of 0.44 cfs, which is the continuous diversion rate to provide the required annual volume of water, over a pumping period of 80 days, the estimated drawdown in a well 1/4 mile distant from the dairy wells is 0.4 feet. Using a maximum pumping rate of 1.62 cfs for 12 days, the estimated drawdown in a well 1/4 mile distant from the dairy wells is about 0.6 feet. (See Applicant's Exhibit 8).

17. The protestant is concerned that the concentration of dairies in the general vicinity of the applicant's proposed dairy and the cumulative effect of the dairies upon air quality, water quality and the overall environment. The protestant believes the application is not in the local public interest.

18. The protestant does not have or claim water rights which will be affected by the proposed dairy.

19. The protestant did not introduce technical evidence to show that the proposal of the applicant will injure other water rights, will enlarge the use of water under the right being transferred, is not in the local public interest or is not consistent with the conservation of water resources within the state of Idaho.

CONCLUSIONS OF LAW

1. Section 42-222, Idaho Code, provides in pertinent part as follows:

The director of the department of water resources shall examine all the evidence and available information and shall approve the change in whole, or in part, or upon conditions, provided no other water rights are injured thereby, the change does not constitute an enlargement in use of the original right, and the change is consistent with the conservation of water resources within the state of Idaho and is in the local public interest as defined in section 42-203A(5), Idaho Code;

2. The applicant carries the burden of coming forward with evidence that the proposed change will not injure other water right holders, that it will not constitute an enlargement of the use and will be consistent with principles of conservation of the water of the state of Idaho.

3. Both the applicant and the protestant have the responsibility of coming forward with evidence regarding matters of public interest of which they are each most cognizant.

4. The applicant has the ultimate burden of persuasion for all of the criteria of Section 42-222, Idaho Code.

5. The proposed changes will not injure other water rights.

6. The proposed changes do not constitute an enlargement in use of the original right.

7. The proposed changed uses of water are as efficient as other similar uses of water for irrigation and dairy uses within the area and are consistent with the local public interest and conservation of water resources within the state of Idaho.

8. The Department should approve the applications with certain conditions.

ORDER

IT IS THEREFORE, hereby ORDERED that Application for Transfer Nos. 5522 and 5523 in the name of Southfield Dairy are **APPROVED** subject to the following conditions:

T5522

1. The right holder shall design and construct the dairy facility to assure that it is capable of complying with the resource protection requirements of the Division of Environmental Quality of the Idaho Department of Health and Welfare and of the Idaho Department of Agriculture. Within one year of this approval, the right holder shall provide information to the Department that the facility has been constructed to meet these compliance requirements. The Director can extend the time for demonstrating compliance upon written request of the applicant and a showing of good cause therefor.
2. Prior to diversion of water under this approval, the right holder shall install measuring devices acceptable to the Department and shall measure and annually report to the Department the amount (cfs and AF) of water diverted under this transfer. Reporting through a measuring district or a ground water district will suffice although the Director may require more frequent measuring and reporting.
3. The water used for commercial purposes under this approval is applied to and irrigates land listed in the place of use to satisfy water quality requirements. Water diverted under this approval shall not be used for irrigation unless the water is first beneficially used in the dairy as authorized by this approval.
4. Rights 36-07377D and 36-07547D when combined shall not exceed a total diversion rate of 1.62 cfs and a total annual maximum diversion volume of 315 AF.
5. The right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code.
6. The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval.
7. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
8. Two points of diversion are located within the SENW Section 10, T8S, R14E, B.M.

T5523

1. Prior to diversion of water under this approval, the right holder shall install measuring devices acceptable to the Department and shall measure and annually report to the Department the amount (cfs and AF) of water diverted under this transfer. Reporting through a measuring district or a ground water district will suffice although the Director may require more frequent measuring and reporting.

2. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.0 AFA per acre at the field headgate for irrigation of the lands above.
3. Right 36-02297 is limited to the irrigation of 91 acres within the place of use described above in a single irrigation season.
4. Right 36-07547F is limited to the irrigation of 32 acres within the place of use described above in a single irrigation season.
5. Rights 36-07377F and 36-07547F when combined shall not exceed a total diversion rate of 0.49 cfs, a total annual maximum diversion volume of 128 AF at the field headgate, and the irrigation of 32 acres.
6. The right holder shall use the full allotment of appurtenant shares of surface water provided by the North Side Canal Co. Ltd. in conjunction with groundwater diverted under right 36-02297 and shall only divert groundwater under 36-02297 when water from the appurtenant surface water rights cannot be delivered to the right holder.
7. Right 36-07377F is limited to the irrigation of 15.5 acres within the place of use described above in a single irrigation season.
8. The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval unless extended for cause by the Director.
9. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
10. If the surface water right(s) appurtenant to the place of use is sold, transferred or used on any other place of use, right 36-02297 to divert groundwater shall not be used without an approved transfer pursuant to Section 42-222, Idaho Code, or approval of the Department if a transfer is not required.
11. The period of use for the irrigation described in this approval may be extended to a beginning date of March 15 and an ending date of November 15 provided that beneficial use of the water can be shown and other elements of the right are not exceeded. The use of water before April 1 and after October 31 is subordinate to all water rights having no subordinated early or late irrigation use and a priority date earlier than the date of this transfer approval.

Signed this 30th day of December, 1999.

/signed/

L. GLEN SAXTON
Hearing Officer